

## R E M A R K S

Reconsideration of the application is respectfully requested. Applicant has attempted to address every objection and ground for rejection in the final Office Action dated 7 March 2006, and believes that the claims as amended are in allowable form.

### CLAIMS REJECTIONS – 35 U.S.C. §103

Claims Claims 19, 20, 21, 24, 25, 26, 27, 28, 31 and 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek (U.S. Patent Number 5,572,892) in view of Preis (U.S. Patent No. 4,581,898). Independent claims 19 and 26 have been amended.

The teachings of Hlavacek and Preis do not intend for either of the two inventions to operate as the present invention. Further, even if combined as the Office Action has suggested, the resulting device will not operate as Applicant's claimed device. The Hlavacek patent teaches a one container cooling and storage unit and does not suggest or teach that the unit should be modified for multiple container storage cylinders as taught by Applicant's invention. Further, Hlavacek and Preis, alone or in combination, do not teach a container positioning means located in multiple cooling cylinders to direct the position of a stored bottle or container toward one or more locations where the cylinders thermally communicate and/or where a heat sink is located. This is an important feature of Applicant's invention because, for example, the second cylinder may be used for cooling bottled wine that requires less cooling such as a red wine. Whereas a white wine which requires more cooling may be placed in the first cylinder. See patent application paragraph 34:

The second cooling cylinder 46 is used for cooling bottled wine that requires less cooling, for instance, red wine needs to be maintained only at near 20C whereas a white wine may require cooling to a lower temperature. By making the width and length of protrusion 45 vary, the differential of temperature or coldness of the second cylinder can be adjusted. The width of protrusion 45

ranges from 10 mm to 20 mm or more. In some applications, the protrusion 45 width may be less than 10 mm. Pad 47 functions as a pusher or positioner of the bottle 3 similarly to pad 44.

There is no suggestion in Hlavacek or Preis that either of these important inventive features are intended. Moreover, neither Hlavacek nor Preis would operate as intended if the modifications suggested by the Office Action were made. It is clear that Hlavacek teaches a device intended for individual, not multiple, containers. (See for example abstract, lines 1-2.) The MPEP specifically states, at Section 2143.01:

**THE PROPOSED MODIFICATION CANNOT RENDER  
THE PRIOR ART UNSATISFACTORY FOR ITS  
INTENDED PURPOSE**

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, *then there is no suggestion or motivation to make the proposed modification.* *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). (emphasis added)

Further,

**THE PROPOSED MODIFICATION CANNOT CHANGE  
THE PRINCIPLE OF OPERATION OF A REFERENCE**

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teaching so fthe references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

**Preis Adds Nothing to the Teaching of Hlavacek to Suggest the Present Invention**

The Preis '898 patent discloses a device for cooling a 12-ounce canned beverage (see Preis col. 1, lines 57-60). The disclosed device provides for the beverage containers (cans) to be “snugly” enclosed in the cooling cavities. (see Preis col. 2, lines 40-45). Therefore, the heat transfer uniformly occurs around the entire surface area of the beverage container. Since the intended fit of the containers within the cooling cavities is “snug”, there is no suggestion in Preis

that the cans or containers should be directed toward a specific point on the cooling cavity wall to significantly increase the cooling at a particular area of the container which is an important feature of Applicant's invention. See Application ¶33, emphasis added:

The natural convection heat transfer and its effect on the movement of the wine inside the bottle 3 is realized. Under a situation where the wine bottle 3 shown, for example, in Figs. 1, 8 and 11 is located at the center of the cooling cylinder 34, there is a substantially uniform thickness of the airgap around bottle 3. In one embodiment, a symmetric configuration is realized. Under the symmetric situation, the wine being in contact with the internal surface of the bottle 3 is uniformly chilled around bottle 3 circumference. The chilled wine in the immediate vicinity of the internal wall of the bottle 3 will move toward to bottom of bottle 3 uniformly. Thus, the cold wine accumulates at the bottom uniformly causing a stratification in temperature of wine: cold wine at the bottom and warm wine near the top of the bottle. This stratification in temperature is undesirable to wine lovers. To avoid the symmetric situation an asymmetrical situation must be created. The asymmetrical situation can be generated, when bottle 3 is forced to make contact with the cooling cylinder 24, preferably where the thermoelectric module 10 is closely located. When this happens, the wine in bottle 3 nearest to and touching the cooling cylinder 34 is colder than that of the wine at the opposite side of the bottle 3. As a result of the colder temperature, the wine in bottle 3 closest to the cold area moves toward the bottom of the bottle because it is heavier than the warmer wine due to its higher density. This downward movement of wine pushes and causes the wine at the opposite side of the bottle that has a lower density and is, thus lighter than the colder wine, to be displaced and move upward. The warm wine near the top of the bottle 3 is now replaced with the cold wine that has moved downward. This chain of events generates a continuous movement of wine within bottle 3, which will contribute to making the wine temperature uniform preventing stratification in temperature of the wine from occurring.

There is absolutely no suggestion in either Preis or Hlavacek that multiple cylinders should thermally communicate and use container positioning devices to direct multiple fluid storage containers to achieve an enhanced cooling effect as with Applicant's invention.

**The Present Invention is not Suggested by the Teachings of Hlavacek and Preis**

As previously discussed, Applicant's invention provides a completely different way to provide for heat transfer to and from beverage containers. As shown in the application, drawings and amended claims 19 and 26, applicant's invention provides for a container to be placed in each of the storage cylinders whereby the container is in contact with the cylinder wall at the maximum point of heat transfer. The Preis device is not constructed this way and does not teach this method of operation. Moreover, Preis teaches away from this type of operation because a container stored in the Preis device will "snugly" fit in the cooling cavities thereby achieving uniform cooling along its surface area and does not require a spacer to direct the stored container toward a maximum point of heat transfer. See Preis Patent col. 2, lines 40-45. The U.S. patent to Hlavacek '892, even if combined with Preis still does not teach applicant's invention as shown in the application and amended independent claims 19 and 26. Moreover, the cited references, alone or in combination, do not teach a container positioning means located in multiple cylinders to direct the position of a stored wine bottle or container toward one or more locations where the cylinders thermally communicate or toward a maximum point of heat transfer for multiple bottles. Therefore, Hlavacek does not teach applicant's invention even when accompanied with the Preis patent. Applicant respectfully submits that claims 19 and 26 are in condition for allowance.

As such, claims 19 and 26 distinguish over Hlavacek in view of Preis and applicant respectfully requests allowance of amended claims 19 and 26. Further, Applicant requests allowance of independent claims 20, 21, 24, 25, 27, 28 and 31 which depend from and contain all of the limitations of claims 19 or 26.

Claims 22 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek '872 in view of Preis '898 and further in view of Sola (U.S. Patent No. 2,838,916) or Cretzmeyer (U.S. Patent No. 4,580,405).

Claims 22 and 29 depend from and contain all of the limitations of claims 19 or 26. for the reasons set forth above, applicant respectfully submits that claims 22 and 29 are in condition for allowance.

Claims 23 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek/Preis and further in view of Kieler (U.S. Patent No. 4,204,875) or Bloch et al. (U.S. Patent No. 6,494,316). Claims 23 and 29 depend from and contain all the limitations of claims 19 or 26. For the reasons set forth above, applicant respectfully submits that claims 23 and 29 are in condition for allowance.

**RECONSIDERATION AND ALLOWANCE REQUESTED**

Applicant hereby respectfully requests reconsideration, continued examination and allowance of the claims. Applicant further requests that should another office action be required in this matter that a non-final office action issue.

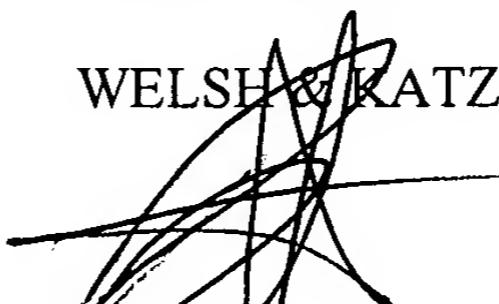
A sincere effort has been made to overcome the Action's rejections and to place the application in allowable condition. Applicant invites the Examiner or Supervising Examiner to call Applicant's attorney to discuss any aspects of the invention that the Examiner may feel are not clear or which may require further discussion.

In view of the foregoing remarks and amendments, it is believed that the claims are allowable and a Notice of Allowance is respectfully requested.

Respectfully submitted,

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